IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 19TH JANUARY 2007 / 29TH PAUSHA 1928

WA.No. 2055 of 2006(A)

AGAINST THE JUDGEMENT IN WPC.21729/2006
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APPELLANT: IST RESPONDENT

THE KERALA STATE HANDLOOM WEAVES CO-OP. SOCIETY LTD., HANTEX, THIRUVANANTHAPURAM, REP. BY ITS MANAGING DIRECTOR.

BY ADV. SRI.M.K.CHANDRA MOHANDAS

RESPONDENTS: PETITIONER
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1. PAUL K.KANNEL,
MANAGER, GARMENTS (UNDER SUSPENSION),
HANTEX INTERNATIONAL GARMENTS UNIT,
THIRUVANANTHAPURAM.

2. STATE OF KERALA,
REP. BY THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF INDUSTRIES,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

R1 BY ADV. SRI.GEORGE POONTHOTTAM
R2 BY GOVERNMENT PLEADERMR. SANDESH RAJA

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 19/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.A.ABDUL GAFOOR &

K.R. UDAYABHANU, JJ.

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W.A.NO. 2055 OF 2006

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DATED THIS THE 19TH DAY OF JANUARY 2007

JUDGMENT

Abdul Gafoor,J.

The appellant placed the first respondent under suspension as per Ext.P9 pending enquiry pursuant to the memo charges, Ext.P1. As per Ext.P4 order, enquiry officer was appointed and Ext.P15 is the enquiry report, which reveals that further enquiry is required with regard to allegations 1 to 5. It was also found that there was prima facie substance in allegation No.5. It was thereafter, Ext.P9 order was issued placing him under suspension. This was challenged by him contending that there was absolutely no reason to place him under suspension except to wreak vengeance on him and that there was no material at all to fasten guilt to place him under suspension. It is further submitted that he had been on deputation to another establishment as Managing Director. In such circumstances, the deputation could not

have been cancelled and he could not have been called back to the service of the appellant where his permanent lien is there, only to place him suspension.

2. The learned single Judge considered whether there has been material for placing him suspension and found, relying on the decision reported in Muhammed v. State of Kerala, 1997(2)K.L.T.394, that Ext.P9 was unwarranted and is the result of colourable exercise of power and that therefore liable to be quashed. Accordingly, Ext.P9 was quashed without prejudice to the enquiry initiated against him. Therefore, this appeal.

3. In this regard, it is profitable to refer once again the decision in **Muhammed v. State of Kerala, 1997(2) K.L.T.394** which has been extracted by the learned single Judge in the impugned judgment. It reads as follows:

> "*It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. Stigma attached to an order of suspension cannot also be*

ignored. Even recognising that suspension per se is no punishment, it cannot be denied that the opprobrium that suspension brings in its wake is, in some respect, worse than many of the penalties prescribed under the rules. The stigma that attaches to an officer under suspension cannot be wished away on the legalistic plea that it is no punishment. That is the reason why the courts always insist that before issuing an order of suspension the authority should be satisfied that in public interest there is material at least prima facie to place an officer under suspension. Courts have always power to look into those records and to satisfy themselves as to whether there are materials before the authority to issue such order of suspension. All the same, court will not reappreciate or re-weigh the whole evidence unless it is proved that the suspension order is vitiated by male fide or irrelevant considerations or issued on extraneous consideration or with improper motive."

Thus it is clear from the decision that if the authority is satisfied based on materials that at least a prima facie case to place an officer under suspension exists, the court will not reappreciate or re-weigh the whole evidence in

that regard, unless it is proved that the suspension order was vitiated by mala fide or irrelevant consideration, even though the court has power to look into the record as to whether there are materials available for the authority to issue such suspension order. Perhaps the allegation raised against the petitioner may be unjustified and without any basis based on a note by the President or the decision of the committee or a legal opinion tendered. Whatever that be the allegation is that the anomaly in the pay revision could not have been rectified because in the case of societies running in loss no hike in the pay scale or total emoluments could have been effected as per the departmental instructions. This is a matter which was in the knowledge of the petitioner and the petitioner had to keep it in mind while ordering hike in pay. Added to this , an affidavit said to be filed before this Court by the writ petitioner resulted in a direction by this Court to rectify the anomalies in the pay revision. It had to be later reviewed by this Court itself wherein appropriate action against him has been directed.

4. In such circumstances, when Ext.P15 report is on record, it cannot be stated that there were no materials to place him under suspension. When Ext.P15 materials are there, even going by the decision in **Muhammed v. State of Kerala, 1997(2)KLT 394** ***"...the court will not repappreciate or re-weigh the whole evidence"***. No mala fide or irrelevant consideration is demonstrated before us.

5. In such circumstances, quashing of Ext.P9 suspension order cannot be said to be justified. Rule 198 (6) of the Co-Operative Societies Rules provides that no officer shall be kept under suspension for a period exceeding six months at a time. The suspension order was passed on 7-8-2006. The said period is fast approaching. In such circumstances it is open for the appellant to complete the the disciplinary action within three months as undertaken by the counsel before us.

Accordingly, the W.A.is allowed setting aside the judgment impugned with direction to the appellant to

complete the disciplinary action as undertaken by the counsel within three months from today. In the event of not completing the disciplinary action within the time stipulated as above, the first respondent will have to be reinstated in service without prejudice to continuance of such action. The writ appeal is allowed.

Sd/-
K.A.ABDUL GAFOOR
JUDGE

Sd/-
K.R.UDAYABHANU,
JUDGE

ks.